

# In the Supreme Court of the State of Idaho

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IN RE: ADOPTION OF NEW IDAHO )  
JUVENILE RULE (I.J.R.) 12.1 ) ORDER  
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The Court having reviewed a recommendation from the Juvenile Rules Advisory Committee and the Administrative Conference to adopt a new Idaho Juvenile Rule, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Juvenile Rules as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That a NEW Rule 12.1 be, and the same is hereby, adopted to read as follows:

**Rule 12.1. Mediation in criminal cases.**

In any criminal proceeding, any party or the court may initiate a request for the parties to participate in mediation to resolve some or all of the issues presented in the case. Participation in mediation is voluntary and will take place only upon agreement of all parties. Decision making authority remains with the parties and not the mediator.

(1) **Definition of "Mediation"**. Mediation under this rule is the process by which a neutral mediator assists the parties (defined as the prosecuting attorney on behalf of the State and the Defendant) in reaching a mutually acceptable agreement as to issues in the case, which may include sentencing options, restitution awards, admissibility of evidence and any other issues which will facilitate the resolution of the case. Unless otherwise ordered, mediation shall not stay any other proceeding.

(2) **Matters Subject to Mediation**. All misdemeanor and felony cases shall be subject to mediation if the court deems that it may be beneficial in resolving the case entirely. Issues related, but not limited to, the possibility of reduced charges, agreements about sentencing recommendations or possible Rule 11 agreements, the handling of restitution and continuing relationship with any victim, are all matters which may be referred to mediation.

(3) **Selection of Mediator.** The court shall select a mediator from those maintained on a roster provided by the Administrative Office of the Courts, after considering the recommendations of the parties. That roster will include senior or sitting judges or justices who have indicated a willingness to conduct criminal mediations and who have completed a minimum of twelve (12) hours of criminal mediation training within the previous two years before being placed on the roster. If the selected mediator is a senior judge or justice, the mediator will be compensated as with any senior judge service, and approval from the trial court administrator must be obtained by the court prior to the mediation.

(4) **Role of the Mediator.** The role of the mediator shall be limited to facilitating a voluntary settlement between parties in criminal cases. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, exploring options and discussing areas of agreement which can expedite the trial or resolution of the case. The mediator shall not preside over any aspect of the case, other than facilitation of a voluntary settlement according to this rule. The mediator shall not take a guilty plea from nor sentence any defendant in the case.

(5) **Persons to be Present at Mediation.** Participants shall be determined by the attorneys and the mediator.

(6) **Confidentiality.** This section should be read in conjunction with the provisions of I.R.E. 507. Mediation proceedings shall in all respects be privileged and not reported or recorded. No statement made by any participant at the mediation shall be admissible at trial of any defendant in the case or be considered for any purpose in the sentencing of any defendant in the case. No statement made by a defendant in the course of mediation shall be reported to the prosecuting attorney without the consent of the defendant. Any written statements submitted to the mediator by either party as a part of the mediation process shall remain confidential and shall not be disclosed by the mediator to anyone. Any confidential statements or notes taken by the mediator shall all be destroyed at the conclusion of the mediation. The mediator shall not discuss any matter that comes up within the mediation with anyone other than the parties and defense counsel and shall advise the assigned court only as to whether the mediation was successful and, if so, the agreed upon terms.

(7) **Mediator Privilege.** Consistent with I.R.E. 507, a mediator may not be compelled to provide evidence of a mediation communication under this rule. However, in Uniform Post-Convictions cases where a defendant is raising allegations about the conduct of the prosecutor or defense counsel involved in the mediation, the mediator may agree to waive the privilege.

(8) **Agreements Reached.** Any agreement reached by the parties is subject to approval by the court and is not final until the court agrees to the terms.

(9) **Communications Between Mediator and the Court.** The mediator may consult with the presiding judge about the terms of a possible plea agreement; otherwise, the mediator and the court shall have no contact or communication except that the mediator may, without comment or observation, report to the court:

- (a) that the parties are at an impasse;
- (b) that the parties have reached an agreement. In such case, however, the agreement so reached shall be reduced to writing, signed by the prosecuting attorney, the Defendant and defense counsel, and submitted to the court for approval;
- (c) that meaningful mediation is ongoing;
- (d) that the mediator withdraws from the mediation.

(10) **Communications Between Mediator and Attorneys.** The mediator may communicate in advance of the mediation with the attorneys to become better acquainted with the current state of negotiations and the issues to be resolved in the mediation. This communication may be conducted separately with each of the attorneys and without the presence of the defendant.

(11) **Termination of Mediation.** The court, the mediator, or any party may terminate the mediation at any time if further progress toward a reasonable agreement is unlikely or concerns or issues arise that make mediation no longer appropriate.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective the first day of July, 2011.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Juvenile Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 18 day of March, 2011.

By Order of the Supreme Court



Daniel T. Eismann  
Chief Justice

ATTEST: Stephen W. Kenyon  
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 3-21-11

STEPHEN W. KENYON Clerk

By: Kimberly Grover Deputy